CF0000061478

G.A. 12.8.97

S.T. No. 562/95

APPEAL PRISONER

No. 527 Name सनतराम @ संतराम

Father's Name हलालुराम Resident ग्राम. लंजोड़ा
थाना. कोड़ागांवे

Age 35 Sentenced to आजीवन कारावास on 25.9.96

Under Section 302 I.P.C. by III A.S.J. Jagdalpur.

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be [illegible] any legal practitioner who should appear.

High Court of Madhya Pradesh
JABALPUR
Date 18 FEB 97
Registration No. 60
Receipt Clerk
High Court, Jabalpur

1. Date of application for copy of Judgement :- N.A.
2. Date of which copy received :- 25.9.96
3. Date on which appeal sent :- 22.10.96
4. Whether the prisoner wished to be represented or not :- Yes / ~~No.~~

No. 527 Name सनतराम @ संतराम पु० हलालुराम

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 451 /अपील/ Dated 22/10/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
केन्द्रीय जेल जगदलपुर

Superintendent Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 14.1.97

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 2(9) dated 15.1.97

Forwaided to the Hiber Sessions Judge JDR

15.1.97

C. R. MAGISTRATE मुख्य न्यायिक मजिस्ट्रेट
जगदलपुर

Date of receipt in Applieate Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(25)

आदेश पत्रक

मामला क्रमांक Cr.A. No. 1282/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 1282 of 1997

Appellant : Sanatram @ Santram

Vs.

Respondent : State of M.P.

Smt. Kiran Jain, learned counsel for the appellant.
Shri U.N.S.Deo, learned G. A. with Shri Akhil Mishra, learned P.L. for the State/respondent.

ORAL JUDGMENT
(Delivered on 05th January 2006)

Per L.C.Bhadoo, J

By this appeal through Superintendent of Central Jail, Jagdalpur, the accused/appellant has questioned the legality of judgment of conviction and sentence dated 25.09.1996 passed by III Additional Sessions Judge, Sessions Division, Bastar in Sessions Trial No. 562/1993 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence of murder he convicted him under section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. The case of the prosecution in brief is that PW-1 Chamruram gave Dehati report (Ex.P/1) to Station House Officer of Police Station

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आदेश पत्रक

मामला क्रमांक C.A. No. 1282/97 सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Kondagaon to the effect that on 29.09.1993 at about 3.30 to 3.45 p.m. when he was standing near his chat trolley and Kanhaiya Gond was also standing near his trolley, at that time Sanatram came carrying a spade in his hand and attacked Kanhaiya on his neck with it as a result of which Kanahiya fell down on the earth and started writhing in pain. The incident was witnessed by his wife Vimlabai (P.W. 5), Chhotelal (P.W. 9), one Lalu and Tea vendor Surju. As a result of the injuries sustained by Kanhaiya, he died spontaneously and blood started oozing out of the injury. Based on this report S.H.O. Subhash Chand Choudhary (P.W.10) registered the First Information Report (Ex P-16) and took up the investigation, left for the scene of occurrence and prepared the Panchnama (Ex P-2) of the body of Kanhaiya. He took into possession the spade, weapon of offence under Ex P-3 and also the blood stained shirt and lungi of accused under Ex P-4. Under Ex P-5 he took into possession the blood stained earth and plain earth from the place of occurrence. The site plan of place of occurrence (Ex. P-6) was prepared by the Patwari. The body of Kanhaiya was sent for post mortem to the Primary Health Centre, Kondagaon where Dr. S.K. Mahajan (P.W.8) conducted post mortem on the body of Kanahiya and prepared post mortem report (Ex P-9). In his opinion (Ex. P-14) he has opined that the injuries which were found on the body of Kanhaiya, could be caused by the spade in question. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Jagdalpur who in turn committed the case to the Sessions Judge,

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मामला क्रमांक Cr. A. No. 1282/97 सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Jagdalpur from where the III Additional Sessions Judge, Jagdalpur, received the case on transfer for trial.

3. The prosecution in order to prove the charge against the accused/appellant examined 10 witnesses. The statement of the accused was recorded under section 313 of the Code of Criminal procedure by the learned Additional Sessions Judge in which the accused denied the prosecution evidence appearing against him and stated that on account of animosity the witnesses have given the evidence against him and he is innocent and has been falsely implicated in the above crime. The learned Additional Sessions Judge after hearing the arguments of learned Additional Public Prosecutor and learned counsel for the accused/appellant convicted and sentenced the accused/appellant as mentioned in paragraph-1 of this judgment.

4. We have heard Smt. Kiran Jain learned counsel for the accused/appellant and Mr. U.N.S. Deo, learned G.A. and Mr. Akhil Mishra learned Panel Lawyer on behalf of the State.

5. Smt. Kiran Jain, learned counsel for the accused/appellant did not dispute the death of Kanahiya as homicidal in nature. Apart from that the evidence of Dr. S.K. Mahajan who conducted the postmortem on the body of Kanahiya is that the death of Kanahiya was homicidal and the cause of death was excessive bleeding, from the evidence of eyewitnesses PW-1 Chamruram and PW-5 Vimla Bai it is established that the death of Kanhaiya was homicidal in nature.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6. As far as the involvement of the accused/appellant in committing the murder of Kanahiya is concerned, learned counsel for the accused/appellant argued that PW-9 Chhotelal has turned hostile and he has not supported the prosecution case whereas PW-1 Chamru and PW-5 Vimlabai have stated that they were busy in their business and they saw that the accused Sanatram attacked with the spade on the neck of Kanahiya. However, no injury was found on the neck of Kanahiya, therefore, they had not witnessed the crime. In fact Kanahiya received six injuries. She also argued that the prosecution has not been able to prove the motive as to why the accused without any rhyme and reason attacked Kanahiya and even the report of the Forensic Science Laboratory has not been submitted.

7. On the other hand, Mr. Mishra, learned P.L. and Mr. Deo, learned G.A. supported the judgment of the trial Court.

8. In order to appreciate the arguments advanced by learned counsel for accused/appellants we have perused the evidence available on record. It is true that the prosecution has not adduced any evidence regarding the motive. The law is well settled on the point that when there is a cogent evidence regarding commission of the crime, absence of motive is not fatal to the prosecution. We are fortified in our view by the judgment of the Hon'ble Apex Court delivered in the matter of **Bikau Pandey and others Vs. State of Bihar** reported in **AIR 2004 Supreme Court 997**. In paragraph 13 of the said judgment the Hon'ble Apex Court has observed that when the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

factual position as highlighted by the eye-witnesses is considered, even the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime.

9. Now coming to the arguments advanced by learned counsel for the accused/appellant that in fact PW-1 Chamruram and PW-5 Vimlabai had not witnessed the crime, PW-1 Chamruram has stated that in the month of September 1993 he was standing near his Chat trolley and at that time the accused came carrying a spade in his hand. Kanahiya, was standing near his chat trolley, accused attacked on his neck as a result of which Kanahiya fell down on the ground. He saw the accused attacking Kanahiya, his wife Vimla Bai also witnessed the crime, report Ex.P-1 bears his signature. In the cross examination he has stated that he was standing near his Chat trolley and some persons were also standing there, when after supplying Chat to the customers he turned towards Kanahiya he saw that Kanahiya had fell down on the ground and there was hue and cry. People were saying that Kanahiya has died. PW-5 Vimla Bai has also stated that she was busy in her business and Kanahiya was standing near the Chat trolley, she saw that at that time the accused came with a spade and attacked on the neck of Kanahiya with the spade. She has further stated that she saw only once the accused attacking the deceased, the deceased fell down and blood started oozing out and he died spontaneously. She has stated that the accused was roaming there carrying the spade in his hand. In cross examination also she has clearly stated that the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

incident took place near the Chat trolley. She has stated that it is incorrect to say that she saw only Kanahiya lying dead and in fact she witnessed the crime even though she was attending the customers but it is not like that she had not witnessed the crime. It is true that these witnesses had stated that the accused attacked Kanahiya with the spade on his neck. In fact as per the postmortem report deceased Kanahiya received as many as six incised wounds which were on right side of occipital bone, parietal bone, frontal bone, left palm, right ear and on the right patella.

10. If we look into the postmortem report and evidence of these witnesses, there is no material discrepancy in the ocular evidence and medical evidence because the witnesses witnessed the accused attacking with the spade. It cannot be said that these witnesses had not witnessed the crime because the neck and the parietal region are the places which are very close to each other, therefore when the witnesses witnessed the crime from a distance they have stated that the accused attacked Kanahiya on his neck. The evidence of these witnesses regarding involvement of the accused in the crime in question stands further corroborated by the fact that First Information Report was lodged promptly in whcih it has been clearly mentioned that accused attacked Kanhaiya with spade. Even P.W. 2 Mehattarram, the village Kotwar has stated that on the fateful day at about 1.00 p.m. the accused was roaming at the bus stand of village-Lanjoda carrying a spade in his hand. In the cross examination of paragraph 4 this eyewitness has stated that the accused was carrying spade in his hand which was

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

snatched by the police officer. The defence has not been able to elicit anything in the cross examination of these two witnesses to make the evidence of these witnesses unreliable. They are the independent witnesses. Neither they were interested in the deceased nor they had any animosity against the accused, therefore there was no reason for these witnesses to implicate the accused in a false case.

11. In view of the above discussions, we are of the considered opinion that the finding of the trial Court regarding involvement of the accused in the crime in question is based on legal evidence and we do not find any illegality or infirmity in this finding. As far as the question of non-production of Forensic Science Laboratory's report is concerned, looking to the evidence available on record even if the report of the Forensic Science Laboratory has not been produced, the same does not affect the prosecution case because that is an extra circumstance to support the prosecution case when the prosecution case is established on the basis of the ocular evidence and if any circumstantial evidence has not been produced that is not going to affect the prosecution case.

12. In view of the foregoing, we do not find any merit in this appeal. The appeal being devoid of merits deserves to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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